

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100901

ORDER DENYING STUDENT'S
MOTION FOR STAY PUT WITHOUT
PREJUDICE

On October 23, 2012, Student filed a request for due process hearing (complaint) naming the Riverside Unified School District District). Student's complaint alleges the District denied him a free appropriate public education by:

1. Failing to determine that Student's behavioral difficulties were a manifestation of his disability and expelling Student from school;
2. Failing to design an individualized educational program (IEP) to meet Student's unique educational needs;
3. Failing to provide a behavioral intervention plan based upon a functional analysis assessment; and
4. Failing to place Student in the least restrictive environment.

On October 27, 2012, Student filed a motion for stay put. Student states that he was expelled from his public school on October 18, 2012, after a manifestation determination hearing resulted in a finding that Student's aggressive behaviors and damage to property were not a manifestation of Student's disabilities. Student contends that his stay put placement is the one described in his last agreed upon IEP dated September 13, 2012, which placed Student at Tomas Rivera Elementary School. Student seeks a stay put order directing the District to return Student to his elementary school.

Student did not attach a copy of his last IEP or any other evidence in support of his motion to his complaint or to his motion for stay put.

The District has not filed an opposition or other response to Student's motion.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)¹; Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

In general, without violating stay-put, school personnel may remove a child with disabilities from the current placement to an interim alternative educational setting (IAES) for less than 10 days for code of conduct violations. (See 20 U.S.C. § 1415 (k)(1)(B).) Removals from a school placement to an IAES for longer than ten days are authorized if the conduct was determined not to be a manifestation of the child's disability, the removal is consistent with the discipline imposed on children without disabilities, and the child continues to receive “educational services . . . to enable the child to continue to participate in the general education curriculum . . . and to progress towards meeting the goals in the child's IEP.” (20 U.S.C. § 1415(k)(1)(C) & (D)(i); 34 C.F.R. § 300.530 (d).) After a manifestation determination, a student has a right to an expedited appeal of the manifestation determination. (20 U.S.C. § 1415(k)(1)(G).)² While the appeal is pending, the child shall remain in the IAES pending the decision of the hearing officer or until the expiration of the 45 school-day IAES placement, whichever occurs first, unless the parent and the LEA agree otherwise. (Ed. Code, § 56505, subd. (d); see 20 U.S.C. § 1415(k)(4)(A) & 34 C.F.R. §§ 300.532, 300.533.)³

¹ All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

² In such cases, “the State or local education agency shall arrange for an expedited hearing.” (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c).) The expedited hearing shall occur within 20 school days of the date the hearing is requested. (*Id.*)

³ The Office of Administrative Hearings (OAH) inadvertently failed to file this case as a dual proceeding, with both an expedited and non-expedited hearing. Since Student challenges his manifestation determination, that issue must be set on an expedited basis. OAH has since issued an amended scheduling order in this matter, setting Student's issue one for an expedited hearing.

DISCUSSION

Here, Student's stay put motion seeks an order that he be returned to his placement prior to the manifestation determination and implementation of school discipline, i.e., his District elementary school placement. Student has not stated in his motion if the District is providing him with an interim alternate placement. If not in a District provided IAES, Student fails to state where, if at all, he is attending school.

When a student with a disability violates a code of student conduct, and a manifestation determination is held that determines the conduct was not a manifestation of disability, then a student has a right to an expedited appeal of the manifestation determination, and while the appeal is pending, the child shall remain in the IAES pending the decision of the hearing officer. Thus, until the expedited hearing on Student's appeal, his placement is in the IAES under title 20 United States Code section 1415(k)(4)(A).

Therefore, Student's motion for stay put is denied without prejudice. If Student believes he has improperly been denied an IAES, Student may renew his motion for stay put. Any renewed motion for stay put must be accompanied by evidence of Student's last agreed upon IEP, evidence of Student's present placement, and evidence that the District has failed to provide Student with an IAES.

ORDER

Student's motion for stay put is denied without prejudice.

Dated: November 5, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings